

RESOLUTION NO. 2-2011

**A RESOLUTION OF THE WESTFIELD ECONOMIC DEVELOPMENT COMMISSION
APPROVING AND AUTHORIZING CERTAIN ACTIONS AND PROCEEDINGS
WITH RESPECT TO CERTAIN PROPOSED ECONOMIC DEVELOPMENT
REVENUE BONDS FOR MS WESTFIELD, LLC**

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Westfield, Indiana (the “City”) is authorized to issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, MS Westfield, LLC (the “Company”) desires to finance certain projects or improvements within the City, including all or any portion of: (a) the acquisition, design, construction, improvement and equipping of a new assisted living and skilled nursing facility consisting of approximately 100 units (70 skilled nursing units and 30 assisted living units) to be located in Westfield, Indiana on approximately 7.5 acres of land on the south side of the future 186th Street just west of Tomlinson Road; (b) construction of certain public infrastructure improvements including the extension of 186th Street; and (c) any costs related thereto (collectively, the “Project”); and

WHEREAS, the Project will be located in the Mainstreet Project Sub-Allocation Area of the Expansion Area No. 1 to the Grand Junction Economic Development Area (the “Allocation Area”) designated by the Redevelopment Commission of the City. The public purpose for which the Bonds are being issued is to finance economic development facilities which will create or retain opportunities for gainful employment and business opportunities; and

WHEREAS, the Company has advised the Westfield Economic Development Commission (the “Commission”) and the City concerning the Project, and requested that the City issue one or more series of its taxable or tax-exempt economic development revenue bonds, Series 2011 (with such further series or other designation as determined to be necessary, appropriate or desirable), in an aggregate principal amount not to exceed Sixteen Million Dollars (\$16,000,000) (the “Bonds”) under the Act and lend all or a portion of the proceeds of such Bonds to the Company for the purpose of financing the Project; and

WHEREAS, the Commission has studied the Project and the proposed financing of the Project and its effect on the health and general welfare of the City and its citizens; and

WHEREAS, the completion of the Project will result in the diversification of industry, the creation and retention of jobs, the creation and retention of business opportunities in the City, and will be of public benefit to the health safety and general welfare of the City and its citizens; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance all or a portion of the Project by issuing the Bonds; and

WHEREAS, the City intends to issue the Bonds pursuant to a Bond Purchase and Loan Agreement, to be dated as of the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Bond Purchase and Loan Agreement"), by and among the City, the Company and the purchaser(s) of the Bonds, in order to obtain funds to lend to the Company for the purpose of financing all or a portion of the Project in accordance with the terms of the Bond Purchase and Loan Agreement; and

WHEREAS, pursuant to the Bond Purchase and Loan Agreement and the note issued thereunder, the Company will make certain representations, warranties and commitments with respect to the Project and will agree to make payments sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds; and

WHEREAS, the Redevelopment Commission and the City will pledge a sufficient amount of the City's distribution of Hamilton County Income Tax (COIT) and certain incremental property tax revenues derived by the Redevelopment Commission from the Allocation Area to the repayment of the Bonds in the event all or a portion of the principal, interest and premium, if any, on the Bonds is not paid by the Company, all as set forth in the Bond Purchase and Loan Agreement; and

WHEREAS, there has been submitted to the Commission for its approval the form of the Bond Purchase and Loan Agreement, the Economic Development Agreement between the Company and the City and the form of the proposed Ordinance of the Council with respect to the Project and the Bonds (the "Ordinance"); and

WHEREAS, pursuant to Indiana Code 36-7-12-24, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance all or a portion of the Project; and

WHEREAS, on the date hereof the Commission held the public hearing on the Project; and

WHEREAS, no member of the Commission has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Commission and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16.

NOW, THEREFORE, BE IT RESOLVED BY THE WESTFIELD ECONOMIC DEVELOPMENT COMMISSION AS FOLLOWS:

SECTION 1. The Commission hereby finds, determines, ratifies and confirms that the financing of the economic development facilities referred to in the Financing Documents (as defined below) consisting of the Project, the issuance and sale of the Bonds, and the loan of the net proceeds thereof to the Company for the purpose of financing all or a portion of the Project (i) will result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

SECTION 2. Based solely upon information provided to it, the Commission reports, finds and determines pursuant to the provisions of the Act that:

(i) The Project will consist of (a) the acquisition, design, construction, improvement and equipping of a new assisted living and skilled nursing facility consisting of approximately 100 units (70 skilled nursing units and 30 assisted living units) to be located in Westfield, Indiana on approximately 7.5 acres of land on the south side of the future 186th Street just west of Tomlinson Road; (b) construction of certain public infrastructure improvements including the extension of 186th Street (the "Project Site);

(ii) The Project will be owned and/or operated by the Company who will use the bond proceeds to acquire, equip and construct the Project for use as a combination assisted living and skilled nursing facility.

(iii) No public works or services not already existing or available, or for which provision has not been made, will be made necessary or desirable on account of the Project as such facilities will be provided either by the Company, private utilities, or existing public facilities, or pursuant to agreements with respect to such public facilities with the City;

(iv) The total cost of the Project will approximate \$16,000,000 of which an amount not to exceed \$16,000,000 will be financed by the Bonds all of which will serve the public purposes referred to above in accordance with the Act;

(v) The Company anticipates employing 140 persons at the Project Site within three (3) years following completion of the Project, with an estimated total annual payroll of approximately \$5,733,000. Although it is estimated that the construction, acquisition, and equipping of the Project will also require temporary full-time equivalent employees

during the initial 36 months of the Project, such additional employees are not included in the projections indicated above;

(vi) The acquisition, construction, installation and equipping of the Project will not have an adverse competitive effect on any similar facilities already constructed or operating in or about the City;

(vii) The proposed financing of the Project complies with the purposes and provisions of Indiana Code 36-7-11.9, -12 and -14, et seq., as supplemented and amended.

SECTION 3. The Commission hereby approves the terms of the following documents in the form presented at this meeting: (i) a form of the Bond Purchase and Loan Agreement with respect to the Bonds among the City, the Company and the purchaser(s) of the Bonds; (ii) the Economic Development Agreement between the City and the Company (clauses (i) and (ii), collectively, the “Financing Documents”); and (iii) an Ordinance of the Council authorizing the issuance of the Bonds and providing for the terms thereof. The forms of the Financing Documents and the Ordinance presented herewith are hereby approved, with any and all such changes as may be deemed necessary, desirable or appropriate by the Mayor and the Clerk-Treasurer of the City.

SECTION 4. The Commission hereby approves the report with respect to the Project presented at this meeting. The Secretary of this Commission is hereby directed to submit, or have submitted on the Commission’s behalf, the findings contained in this Resolution and such report to the Executive Director or Chairperson of the Westfield-Washington Advisory Plan Commission having jurisdiction over the Project and the superintendent of the school corporation where the Project will be located pursuant to Indiana Code 36-7-12-23(b).

SECTION 5. The Commission hereby approves and recommends the City issue its Bonds in one or more series, any series of which may be taxable or tax-exempt, with a maximum aggregate principal amount not to exceed Sixteen Million Dollars (\$16,000,000), with a maximum term not to exceed twenty-five (25) years and with a maximum interest rate not to exceed eight and one-half percent (8.5%) per annum, for the purpose of procuring funds to loan to the Company in order to finance all or a portion of the Project, which Bonds will be payable as to principal and interest solely from (i) payments made by the Company pursuant to the Bond Purchase and Loan Agreement and the note issued thereunder, (ii) the City’s distributive share of COIT, and (iii) incremental property tax revenues derived by the Redevelopment Commission from the Allocation Area (but only to the extent the revenues identified in clause (i) are insufficient for such purpose), and upon such terms and conditions as otherwise provided in the Financing Documents and the Ordinance. The Bonds shall be sold at a price not less than ninety-eight percent (98%) of the aggregate principal amount thereof, plus accrued interest, if any. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 6. In order to induce the Company to proceed with the acquisition, design, construction, installation and equipping of the Project, the Commission hereby finds and determines that: (a) it will take or cause to be taken such actions pursuant to the Act as may be required to implement the aforesaid financing, or as it may deem appropriate in pursuance

thereof; provided that all of the foregoing shall be mutually acceptable to the City and the Company; and (b) it will adopt such resolutions and authorize the execution and delivery of such instruments and the taking of such action as may be necessary and advisable for the authorization, issuance and sale of the Bonds.

SECTION 7. Any officer of the Commission is hereby authorized and directed, in the name and on behalf of the Commission, to execute and deliver any and all other agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by him to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this resolution (including the preambles hereto and the documents mentioned herein), the Project and the issuance and sale of the Bonds, and any such execution, performance, approval or doing of other things heretofore effected be, and hereby is, ratified and approved.

SECTION 8. The Secretary of this Commission shall transmit this resolution and the form of the Ordinance, together with two (2) copies of the forms of the Financing Documents approved by this resolution, to the Office of the Clerk-Treasurer of the City for presentation to the Council with the recommendation that the Council approve the forms of the Financing Documents and adopt the proposed Ordinance hereby recommended to the Council.

SECTION 9. All action taken and approvals given by the Commission with regard to the Company are based upon the evidence submitted and representations made by the Company, its agents and counsel and their good-faith compliance therewith. No independent examination, appraisal or inspection of the Project was made, requested, or is contemplated by the Commission or the City.

SECTION 10. The Commission and the City do not, by this or any other approval or finding, guarantee, warrant or even suggest that the Bonds, coupons or series thereof will be a reasonable investment for any person, firm or corporation.

SECTION 11. Neither the City nor the Commission shall be obligated, directly or indirectly, to see to the application or use of the proceeds from the sale of the Bonds or to see that the contemplated improvements, if any, are constructed. The Commission and the City are in no way responsible to the holders of any Bonds for any payment obligation created by the Bonds.

SECTION 12. The Commission and the City do not warrant, guarantee or even suggest that interest to be paid or income to be received by the holders of any Bond, coupon, or series thereof is exempt from taxation by any local, state or federal government.

SECTION 13. The Bonds, if and when issued, shall be special, limited obligations of the City, payable solely from the funds provided therefore as described in the documents authorizing the Bonds, and shall not constitute an indebtedness of the Commission or the City or a loan of the credit thereof within the meaning of any constitutional or statutory provisions.

SECTION 14. This resolution shall be in full force and effect upon adoption.

Adopted this 12th day of September, 2011.

CITY OF WESTFIELD ECONOMIC
DEVELOPMENT COMMISSION

President

Vice President

Secretary